IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24/07/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice M. THANIKACHALAM

H.C.P. No.2211 OF 2002

A. Aneesur Rahman
S/o Late Anwar Basha
No.33-B Balaji Nagar
Royapettah
Chennai 600 014
(COFEPOSA Detenu No.4419)
now confined in Central
Prison, Chennai ..... Petitioner

-Vs-

1. The Government of Tamil Nadu
rep. by the Secretary
Public (SC) Department
Chennai 600 009

2. Union of India
rep. by the Secretary to
Government of India
Ministry of Finance
Department of Revenue
(COFEPOSA Unit)
Central Economic Intelligence Bureau
New Delhi ..... Respondents

Petition under Art.226 of the Constitution of India, praying for a Writ of Hebeas Corpus as stated in the petition

For Petitioner :: Mr. Habibulla Basha,
Senior Counsel for
Mr. N. Ananth &
Mr. S. Dayakeshwaran

For Respondents :: Mr. I. Subramaniam
Public Prosecutor/
Senior Advocate for
Mr. A.Navaneethakrishnan

Addl. Public Prosecutor

:ORDER

(Order of the Court was made by V.S. SIRPURKAR, J.)

In this writ petition, the challenge is to the order passed by the Government dated 20th September, 2002 under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short "COFEPOSA"), ordering the detention of one Thiru A. Aneesur Rahman, son of late Anwar Basha. The said Aneesur Rahman was apprehended in Chennai International Air port while he was on his way to Dubai by a flight of Oman Airlines. He was found to be carrying a baggage of two zipper suitcases, one stroller bag and one zipper handbag. When he was stopped by the authorities and asked as to the contents of the bags, he said that the bags contained sweet-boxes and personal things. One bag was opened and it was found that there were two hard-boxes and those hard-boxes were fixed with false bottom and contained Rs.21,60,000/- in one bag and Rs.20,00,000/- in another bag. By the same flight one Kiran Kumar and his wife Mrs. Hema Kiran Kumar were also travelling. He claimed to be the Manager of the said Kiran Kumar and on his statement even Kiran Kumar and Hema Kiran Kumar were also stopped and the statements were recorded. In his statement he tried to claim that these bags were being carried at the instance of Kiran Kumar, whose employee he was, whereas, Kiran Kumar denied all that. Ultimately, the said detenu was arrested and so also Kiran Kumar and his wife. Eventually, all these persons came to be bailed out by the courts of law, including this Court. Ultimately, an order came to be passed on 20th September, 2002 by the Secretary to the Government on behalf of the Government, ordering the preventive detention of the detenu under the COFEPOSA.

2. We need not go into the details of what all happened before the order was inflicted upon as also the other facts in view of the submissions made by Shri Habibulla Basha, learned senior counsel appearing on behalf of the petitioner.

3. Mr. Basha, amongst other contentions, pointed out that there were serious errors committed by the detaining authorities inasmuch as firstly the relied upon documents were not supplied to the petitioner within time as contemplated by Sec.3(3) of the COFEPOSA. Learned counsel points out that some documents came to be supplied to the petitioner by a letter dated 8-10-2002. Learned counsel heavily relied on this letter and for the sake of convenience we would choose to quote the letter:
"PUBLIC (S.C.) DEPARTMENT
Lr.No.SR.I/1089-25/2002 Dated:08-10-2002

From:

Thiru T. Pitchandi, I.A.S.,
Secretary to Government

To:

Thiru A. Aneesur Rahman
S/o (late) Anwar Basha
No.33 B Balaji Nagar,
1st Street
Royapettah
Chennai-14

Through the Superintendent of Prison
Central Prison
Chennai 600 003 (with enclosures)

Sir,

Sub: The COFEPOSA Act, 1974 – Detention
of Thiru A. Aneesur Rahman under the Act – Relied upon
documents -
Servicing of.
Ref: This Government's letter No.SR.I/
1089-10/2002, dated 2-9-2002

In continuation of the Government letter cited, I am to send herewith the record of 2 pages in English viz. pages 341A and 561A of the documents relied upon in this case, which were omitted to furnish along with the documents already furnished with the Government letter cited. The pages may be read out in continuation of pages 340 & 561 of the documents respectively which had been already furnished to you.

Yours faithfully,
Sd/-
(emphasis ours)
From this letter, learned counsel points out that the documents at page Nos.341A and 561A came to be supplied vide this letter and actually they were supplied to the detenu on 10-10-2002. Learned counsel goes one step ahead and points out that both these documents have been described as the 'relied on' documents in the said letter. The argument is that the grounds have to be supplied within a particular time limit as contemplated by the Act and it is trite law now that the grounds mean and include not the mere statements of allegation but also the 'material' on which the said grounds are based. The said 'material' would necessarily mean 'relied on' documents. Learned counsel points out that as per Sec.3(3), the time limit for communication of the grounds is between 5 to 15 days. It is pointed out that the order of detention came to be passed on 20th September 2002 and, therefore, the detaining authority was bound under the law to communicate the grounds within fifteen days as contemplated in Sec.3(3) of COFEPOSA, which time-limit was obviously been broken. So also, the detaining authority was bound to supply the documents on which the reliance was placed. We have been extensively taken through the grounds supplied to the detenu wherein a reference is made to a number of documents. Without going to that, learned counsel points out

that if these documents have been described as the relied upon documents, which is clear from the language of the letter, then, the non-supply of these documents in time as indicated in Sec.3(3) of the Act would invalidate the detention.

4. The second contention raised by the learned counsel is that the detenu knew only English and Tamil languages and he could read and write the same. However, he could only understand Urudu and Hindi languages but was not able to read or write the same. Learned counsel points out that a document, viz. representation made by Mrs. Hema Kiran Kumar, which is referred to in Ground No.42 of the grounds at page 12, supplied to him is in Hindi. Learned counsel points out that there was another document also, which was supplied to the detenu in Hindi, which is a document dated 11-9-2002, statement made by one Sakhli Devi. Learned counsel further points out that though the English translation of this document was supplied to him, the earlier mentioned document sent by Mrs. Hema Kiran Kumar was not supplied to him and this amounts to a breach of the detenus right to know the grounds. Learned counsel, therefore, contends that the detention would be rendered illegal because there has been a breach of the important condition as laid down in Art.22(5) of the Constitution of India.

4. Learned counsel also suggests that the grounds mentioned that reliance was placed on the communication dated 13-9-2002 by one Badrunnisa, wife of F. Rahman, sister-in-law of the detenu, and the said communication had not been supplied, though asked for by the detenu.

5. It will, therefore, have to be seen as to whether the aforementioned documents were the relied upon documents and could be said to be the material documents in support of the grounds of detention.

6. When we go to the language of the letter dated 8-10-2003, it in no uncertain terms accepts that amongst the documents, which were relied upon, some documents were left to be supplied to the detenu. Once that position is accepted on the basis of the language of the letter, which is signed on behalf of the Secretary to the Government then, there could really be no escape for the Government to suggest that those two documents were in fact not relied upon documents. If that is so, the said documents were undoubtedly relied upon documents, which the detaining authority failed to supply in support of the grounds on which rested the detention of the detenu. If this is so, there will be no question of any prejudice because, the non-supply of the relied upon documents would be fatal to the continued

detention of the detenu. Non-supply of the document would undoubtedly impinge upon the right of the detenu to make a representation against the detention at the earliest opportunity and his detention would be rendered illegal.

7. Same thing can be said about the document dated 13-9-2002, said to be a communication by Badrunnisa. There is a clear-cut reference to

that document in the grounds. The non-supply of that document would also additionally pollute the detention.

8. Last, but not the least, in so far the language aspect is concerned, there could be no doubt that it is mentioned in the grounds that the detenu only understands Hindi and Urudu but cannot read and write the same. The document, which is the communication by Mrs. Hema Kiran Kumar, is in Hindi. If that document could not be read by the detenu, there would be no question of the communication of that ground to him. There is undoubtedly a reference to that document in the grounds and the translation thereof was bound to be supplied. As it is, the detaining authorities did supply the translation of the other Hindi document, which was the statement by Sakhli Devi. One wonders as to why that the translation of the other Hindi documents were not made available to the detenu. That would also be the infraction of the rights of the detenu to know the grounds completely.

9. In that view, the petition must succeed. The detention is quashed. The detenu shall be released forthwith unless he is required in any other matter.

Index:Yes
Website:Yes
Jai

To:

1. The Secretary to Government
State of Tamil Nadu
Public (SC) Department
Chennai 600 009

2. Secretary to Government
Union of India
Ministry of Finance
Department of Revenue
(COFEPOSA Unit)
Central Economic Intelligence Bureau
New Delhi

3. Superintendent of Central Prison
Central Prison, Chennai

4. The Public Prosecutor
High Court, Madras